(1)

Supreme Court, U.S.
FILED

04-795 DEC 10 2004

OFFICE OF THE CLERK

No. _____

In the
Supreme Court of the United States

ALEXANDER A. BAGNE
Petitioner,

v.

THE SUPREME COURT OF OHIO
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

PETITION FOR WRIT OF CERTIORARI

ALEXANDER A. BAGNE
PRO SE
3286 STOCKHOLM ROAD
SHAKER HEIGHTS, OHIO 44120
PHONE: 216-751-7609

QUESTION PRESENTED

Are the pronouncements of this Court in Willner v. Character and Fitness, that bar applicants must be afforded due process of law at all stages of the admissions process, defeated under the name of local practice when an applicant is denied the right to be heard and present evidence in his defense solely because he filed a one-day late proof of service upon a non-appearing party, where the applicant timely complied with all other procedural rules?

PARTIES TO THE PROCEEDING

Petitioner

Petitioner is Alexander A. Bagne, an individual citizen of the United States, residing in Shaker Heights, Ohio.

Respondent

Respondent is the Supreme Court of Ohio, which is charged by the Ohio Constitution with the responsibility of adjudicating applications for admission to the practice of law.

TABLE OF CONTENTS

Question Presented i

Parties to the Proceeding ii

Table of Contents iii

Table of Cited Authorities v

Relief Sought 1

Opinions Below 1

Statement of Jurisdiction 1

Constitutional and Statutory Provisions Involved 1

Statement of the Case 3

Reasons for Granting the Writ 6

In Its Refusal To Allow Bagne To Be Heard And Present Evidence At The Final Stage Of The Attorney Licensing Process, The Ohio Supreme Court Denied His Right To Due Process Of Law And Decided The Issues In A Way That Directly Conflicts With The Decisions Of This Court 6

Conclusion 8

Appendix

Appendix A
Joint Committee Bar Commissions Recommendation, 6/14/02 ..... 1a

Appendix B
Report and Recommendation of the
Board, 7/16/03.....6a

Appendix C
Notice from Ohio Supreme Court Clerk
Rejecting Appellant's Papers, 8/28/2003.....12a

Appendix D
Supreme Court of Ohio Order, 10/1/03.....14a

Appendix E
Supreme Court of Ohio Opinion, 5/12/04.....15a

Appendix F
Supreme Court of Ohio Order, 7/14/04.....22a

TABLE OF CITED AUTHORITIES

Cases

Board of County Comm'rs v. United States, 308 U.S. 343; 60 S. Ct. 285; 84 L. Ed. 313 (1939) 7, 9

Brown v. Western R. of Alabama, 338 U.S. 294; 70 S. Ct. 105; 94 L. Ed. 100 (1949) 8

Davis v. Wechsler, 263 U.S. 22; 44 S. Ct. 13; 68 L. Ed. 143 (1923) 7

James v. Kentucky, 466 U.S. 341; 104 S. Ct. 1830; 80 L. Ed. 2d 346 (1984) 8

Ward v. Board of County Comm'rs of Love County, 253 U.S. 17; 40 S. Ct. 419; 64 L. Ed. 751 (1920) 7

Willner v. Committee on Character and Fitness, 373 U.S. 96; 83 S. Ct. 1175; 10 L. Ed. 2d 224 (1963) 7

Wright v. Georgia, 373 U.S. 284; 83 S. Ct. 1240; 10 L. Ed. 2d 349 (1963). 8

Statutes

Rules for the Government of the Bar of Ohio, I(1)(D) 2, 3

Rules for the Government of the Bar of Ohio, I(12)(F)(2) 2, 6

Rules for the Government of the Bar of Ohio, I(12)(F)(4) 2, 6

Rules of Practice of the Supreme Court of Ohio, XIV(2)(A) 1, 4

Rules of Practice of the Supreme Court of Ohio, XIV(2)(C) 2, 4

RELIEF SOUGHT

Petitioner respectfully petitions for a Writ of Certiorari to review the judgment of the Supreme Court of Ohio in this case.

OPINIONS BELOW

The Supreme Court of Ohio opinion is reported at 808 N.E.2d 372 (2004).

STATEMENT OF JURISDICTION

The judgment of the Supreme Court of Ohio was entered on May 12, 2004. Petitioner filed a motion for reconsideration that was denied on July 14, 2004. Petitioner applied for an extension of time with this Court within which to file a petition for writ of certiorari that was granted on October 8, 2004. This petition for writ of certiorari is filed within sixty days of that date. 28 USC §2101(c). This Court has jurisdiction by virtue of 28 USC §1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the following statutory provisions:

Rule XIV of the Rules of Practice of the Supreme Court of Ohio

This Rule provides in subpart (2):

(A) Service Requirement.

When a party or an amicus curiae files any document with the Clerk, except a complaint filed to institute an original

action, that party or amicus curiae shall also serve a copy of the document on all parties to the case.

***

C) Certificate of Service; Certificate of Filing.

The Clerk shall refuse to accept for filing any document that does not contain a certificate of service, unless these rules require that the document be served by the Clerk.

Rules for the Government of the Bar of Ohio, Rule I, Admission to the Practice of Law

This rule provides in sub-part (12)(F):

(2) Within 30 days after issuance of the show cause order, the applicant and the admissions committee may file objections to the findings or recommendation of the Board. The objections shall be accompanied by the original and 18 copies of a brief in support of the objections.

***

(4) Unless clearly inapplicable, the Rules of Practice of the Supreme Court of Ohio shall apply to proceedings filed in the Supreme Court under this division. Service of briefs and other documents shall be made upon the applicant, the admissions committee, and all counsel of record.

Rules for the Government of the Bar of Ohio, Rule I, Admission to the Practice of Law

This rule provides in sub-part (1):

To be admitted to the practice of law in Ohio, an applicant shall:

(D) prior to taking the Ohio bar examination or being admitted without examination pursuant to Section 9 of this Rule, have demonstrated that the applicant possesses the requisite character, fitness, and moral qualifications for admission to the practice of law and have been approved as to character, fitness, and moral qualifications under procedures provided in this Rule;

STATEMENT OF THE CASE

After receiving a favorable recommendation from his local bar association, but an unfavorable recommendation from the Ohio Board of Bar Commissioners, on August 27, 2004, Alexander A. Bagne ("Bagne") filed his objections, supporting brief, and proof of service with the Ohio Supreme Court. However, on August 28, 2004, his objections and brief were rejected because his proof of service failed to indicate service on his local bar association (a non-appearing party to the Ohio Supreme Court proceedings). This resulted in a complete inability to present evidence in support of his good character, and consequently led to the Court's ultimate denial of his admission to practice law. The pertinent facts follow.

Bagne applied on January 15, 2002, to register as a candidate for admission to the practice of law in Ohio. Pursuant to standard Ohio admissions policy, Bagne's application was initially referred to his local bar association's office for a recommendation. The Joint Admissions Committee of the Cleveland and Cuyahoga County Bar Associations conducted an extensive and thorough review of Bagne's qualifications for admission. On July 9, 2002, his local bar associations unanimously recommended that Bagne's character, fitness, and moral qualifications be approved for the purpose of his admission to the Ohio bar (App. A at 1a).

For reasons unclear by the record, the Ohio Board of Commissioners on Character and Fitness ("the Board") disregarded the favorable recommendation of Bagne's qualifications, invoked its authority to further investigate the character, fitness, and moral qualifications of Bagne, and appointed a panel to consider the cause on July 22, 2002. At a hearing held on November 7, 2002, the representative to the Joint Bar Admissions Committee for the Cuyahoga and Cleveland Bar Associations appeared before the Board and reiterated his Committee's approval of Bagne and urged the Board to affirm. After more than eight months of consideration, on July 16, 2003, the Board filed its recommendation that Bagne be disapproved and that he be allowed to reapply to take the very next Bar Examination in February 2004 (App. B at 6a).

Bagne timely filed an objection to the report and recommendation of the Ohio Board of Commissioners on Character and Fitness with the Supreme Court of Ohio. However, because his local bar association elected not to appear in the Supreme Court proceedings, Bagne did not serve that entity with his objections or brief as required under Ohio S. Ct. Prac. R. XIV(2)(A). On August 28, 2004, the Clerk of the Ohio Supreme Court rejected Bagne's filing under Ohio S. Ct. Prac. R. XIV(2)(C), *in toto*, and notified him of the same (App. C at 12a).[1] The next day and as soon as Bagne learned of this error, he served the Cuyahoga and Cleveland Bar Associations. However, the Clerk of the Ohio Supreme Court refused to present his objections and brief to the Court for consideration. Id.

Petitioner then attempted to invoke his federally secured right to be heard at the final stages of the admission process by filing a motion for oral argument. However, it was denied on

[1] Given that the Cuyahoga and Cleveland Bar Associations elected to refrain from participating in the Supreme Court proceedings, a one-day delay in serving them resulted in no harm.

October 1, 2003, without explanation (App. D at 14a). In re Application of Bagne, 796 N.E.2d 940 (2003). On May 12, 2004, based solely upon the Board's recommendation and without considering Bagne side of the argument, the Ohio Supreme Court disapproved Bagne's character and fitness for the purpose of his application to take the July 2002 bar examination. Even more troubling, the Ohio Supreme Court applied a longer disqualification period than the Board's initial recommendation without ever hearing a word from applicant Bagne (App. E at 15a). In re Application of Bagne, 808 N.E.2d 372 (2004). Bagne filed a motion for reconsideration, specifically requesting the right to be heard and present evidence in his favor, which was denied without explanation on July 14, 2004 (App. F at 22a). In re Application of Bagne, 811 N.E.2d 1152 (2004).

Because Bagne was denied the right to be heard at the final stages of the admissions process, Bagne was not allowed to refute the Board's findings or even correct factual errors in the Board's recommendation. Furthermore, compelling evidence in support of his good moral character was never presented to the Court, such as his high educational achievements, his many volunteer activities, his exemplary work record, his devotion to his wife and two children, his abidance with the law, his recent favorable character recommendation from a Michigan Character and Fitness panel, or his success as a licensed Certified Public Accountant.

REASONS FOR GRANTING THE WRIT

In Its Refusal To Allow Bagne To Be Heard And Present Evidence At The Final Stage Of The Attorney Licensing Process, The Ohio Supreme Court Denied His Right To Due Process Of Law And Decided The Issues In A Way That Directly Conflicts With The Decisions Of This Court.

On May 12, 2004, the Ohio Supreme Court decided In re Application of Bagne, 808 N.E.2d 372 (2004), which denied Bagne's request for admission to practice law. The Ohio Supreme Court's decision, however, is notable for what it does not contain, namely, reference to the Court's refusal to allow Bagne to appear and present evidence in support of his good character.

More specifically, in order to challenge an adverse administrative licensing recommendation by the Board, an applicant must invoke Ohio Gov. Bar R. I(12)(F)(2), which provides that within 30 days after issuance of a show cause order by the Supreme Court of Ohio, an applicant and the admissions committee may file objections to the findings or recommendation of the Board. Additionally, the Rule requires that objections shall be accompanied by the original and 18 copies of a brief in support of the objections. Here, there is no dispute that Bagne timely complied with these state procedural requirements.

The controversy here, however, surrounds Bagne's failure to comply with Ohio Gov. Bar R. I(12)(F)(4) which provides "Unless clearly inapplicable, the Rules of Practice of the Supreme Court of Ohio shall apply to proceedings filed in the Supreme Court under this division. *Service of briefs and other documents shall be made upon the applicant, the admissions committee, and all counsel of record.*" (emphasis added). Although Bagne's proof of service indicated that the Board had been served, it admittedly

omitted designation of service upon his local bar association, which had elected not to appear in the Ohio Supreme Court proceedings. Although this seemingly harmless error was corrected the following day, the Court rejected all of Bagne's papers, including his objections, brief and supporting documents.

An applicant for a license to practice law has a federally secured right to be heard *at all levels* in a state's character and fitness evaluation. Willner v. Committee on Character and Fitness, 373 U.S. 96, 105; 83 S. Ct. 1175; 10 L. Ed. 2d 224 (1963) ("A full hearing, a fair and open hearing, requires that those who are brought into contest with the government in a quasi-judicial proceeding aimed at the control of their activities are entitled to be fairly advised of what the government proposes *and to be heard* upon its proposals before it issues its final command.") (emphasis added).

While no one disputes that the states have an interest in ensuring their procedural rules are obeyed, especially of attorney applicants, state procedural rules cannot be used to unduly deprive a litigant of his right to have his federal constitutional claims adjudicated. Board of County Comm'rs v. United States, 308 U.S. 343, 350; 60 S. Ct. 285; 84 L. Ed. 313 (1939) ("Nothing that the state can do will be allowed to destroy the federal right which is to be vindicated"). It has long been within the province of the federal courts to inquire whether a federal right has been denied, not only in express terms, but in substance and effect, as by putting forward a state law ground that is without fair or substantial support. Ward v. Board of County Comm'rs of Love County, 253 U.S. 17, 22; 40 S. Ct. 419; 64 L. Ed. 751 (1920). In state court, when the assertion of a federal right is "plainly and reasonably made," the federal claim "is not to be defeated under the name of local practice." Davis v. Wechsler, 263 U.S. 22, 24; 44 S. Ct. 13; 68 L. Ed. 143 (1923); James v. Kentucky, 466 U.S. 341, 349; 104 S. Ct. 1830; 80

L. Ed. 2d 346 (1984); Burks v. Lasker, 441 U.S. 471, 479; 99 S. Ct. 1831; 60 L. Ed. 2d 404 (1979) ("federal courts must be ever vigilant to insure that application of state law poses no significant threat to any identifiable federal policy or interest . . . . And, of course, this means that "unreasonable," or specific aberrant or hostile state rules, will not be applied.").

Whatever springes the state may set for those who are endeavoring to assert rights that the state confers, the assertion of federal rights, when plainly and reasonably made, is not to be defeated under the name of local practice. Should the U.S. Supreme Court fail to protect federally created rights from dismissal because of over-exacting local requirements for meticulous pleadings, desirable uniformity in adjudication of federally created rights could not be achieved. Brown v. Western R. of Alabama, 338 U.S. 294, 298-299; 70 S. Ct. 105; 94 L. Ed. 100 (1949); Wright v. Georgia, 373 U.S. 284, 289; 83 S. Ct. 1240; 10 L. Ed. 2d 349 (1963).

The Ohio Supreme Court's refusal to allow Bagne to be heard before the Court issued its decision, on account of a one-day late proof of service upon a non-appearing party to the litigation, is fundamentally unfair, unduly harsh, and contravenes Bagne's Fourteenth Amendment right to due process of law.

CONCLUSION

In its refusal to allow Bagne to be heard and present evidence at the final stage of the attorney licensing process, the Ohio Supreme Court denied Bagne his right to due process of law and decided the issues in a way that directly conflicts with the decisions of this Court. This Court has long recognized that an applicant for a law license possesses a liberty interest in his chosen profession. Willner, supra. In the matter sub judice, the Ohio

Supreme Court unreasonably defeated Bagne's liberty interest in the name of local practice. This is an impermissible ruling from the state court that warrants a writ of certiorari. Board of County Comm'rs, supra.

This Court should vindicate the federal rights of Bagne, vacate the decision of the Ohio Supreme Court, and remand with instructions to permit Bagne to be heard and present evidence on his claimed right to practice law.

For the reasons set forth above, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDIX A

June 14, 2002

Joint Committee on Bar Commissions
113 St. Clair Avenue, Suite 100
Cleveland, OH 44114

Re: Application of Alexander A. Bagne
for Admission to the Practice of Law

Ladies and Gentlemen:

We interviewed Alexander A. Bagne (the "Applicant") extensively on June 3, 2002. We have concluded that the Applicant should be accepted for admission to the practice of law in the State of Ohio as shown on the report of the Admissions Committee Interviewer submitted by each of us. The purpose of this letter is to more fully inform the Joint Committee on the reasons underlying our decision.

The Applicant graduated from Tulane Law School in May, 1999. In July, 1999 the Applicant sat for and passed the Michigan 1999 Bar Examination. However, his application to practice law in the State of Michigan was denied by the State Bar of Michigan District 1 Character and Fitness Committee on September 2, 1999. That denial was appealed to the Michigan State Board of Law Examiners which concluded on January 23, 2001 that the Applicant did not possess the requisite character and fitness to practice law in Michigan. We thoroughly reviewed the Applicant's Character Questionnaire, Supplemental Character Questionnaire, and the Report of the National Conference of Bar Examiners. All of these

documents were provided to us by the Joint Committee. In addition, during our meeting with the Applicant he voluntarily provided us with the following additional documents which were also thoroughly reviewed by us: Tulane Law School Application dated January 1, 1996, State Bar of Michigan Affidavit of Personal History dated March 1, 1999, the Bluefield Township Police Department Narrative Report dated September 8, 1991, the Report and Recommendation of State Bar of Michigan Subcommittee dated September 2, 1999, and the Michigan State Board of Bar Examiners Opinion dated January 23, 2001. These documents are enclosed herewith as supplements to the Applicant's Character Questionnaire.

The Applicant's Character Questionnaire disclosed two incidents that caused us to examine him at length so that we could determine whether he possessed the requisite standards of character, fitness, and moral qualifications required for admission to the practice of law. The first incident occurred in April, 1990 while the Applicant was a juvenile. The Applicant and several friends made a so-called "Molotov Cocktail" which they dropped off of a bridge as an oncoming train was approaching. Their purpose was to scare the conductor but they had no intention of inflicting personal or property damage and no such damage did result. The Applicant was caught, was placed on a one-year probation, and successfully completed the probation. We are satisfied with the Applicant's explanation of the incident as a prank. Although the incident does not reflect upon the Applicant's good judgment, it occurred twelve years ago while the Applicant was a juvenile and we feel that the incident should not disqualify the Applicant from the practice of law.

The second incident occurred in September, 1991. On the Applicant's Character Questionnaire he disclosed that he and a friend were shooting BB guns out of a car window along what they

thought was an unoccupied area. Later that day the police questioned them about shooting BB guns in the Applicant's backyard. The Applicant then learned that while shooting out of the car window he had hit a Jogger. During our meeting the Applicant acknowledged that although the area was unoccupied there were buildings and signs in the area that the Applicant and his friend were shooting at. The Applicant was adamant that he was not aware of a jogger in the area and had no idea that a jogger had been hit until informed of the fact later that evening by the police officer. The Applicant's statements on the police report contain identifying information about the jogger. The Applicant stated that the information was given to him by the police while filling out the paperwork and he was asked to include the information to make the report more complete. Upon examination of the report and the identifying information insertion we are satisfied with the Applicant's explanation. The Applicant expressed remorse over the incident. We believe the Applicant was sincere and truthful in relating the circumstances to us and in disclosing the facts on all of the various applications, reports, etc. he earlier completed

We discussed with the Applicant the version of the events that the Applicant testified to during his October 20, 2000 hearing with the Michigan Board of Law Examiners. At that hearing the Applicant was represented by counsel. The Michigan Board's opinion cast doubt on the Applicant's version of the 1991 incident. At the hearing the Applicant relayed a version of the facts that the Board found not credible. We inquired of the Applicant as to the version of facts presented at the hearing (that the driver of the car could have been the person that hit the jogger instead of the Applicant), a version that had not been presented before. The Board opined that the Applicant was trying to pin the responsibility for the event on someone other than himself. The Applicant told us that immediately before the hearing took place, his attorney asked him whether he was certain that he had been the one that hit the

jogger. The Applicant replied that he was not absolutely certain because he in fact had not even been aware that a jogger was hit. The attorney theorized that based on the driver's actions it was possible that the driver's BB gun hit the jogger instead of the Applicant's gun, and the attorney advised the Applicant to suggest this during the hearing. The Applicant told us that although he presented this version at the urging of his attorney, he took full responsibility for the incident with the Board. He stated that he would not have presented this version except for the advice of his attorney and he never intended to deflect responsibility away from himself. The Applicant maintains that he was not aware that a jogger had been hit; nevertheless he continues to take full responsibility for the incident and is remorseful. He never learned the identity of the jogger but made full restitution for her medical expenses through the court.

After review of all of the documentation and the extended interview with the Applicant, it is our opinion that the Applicant has been truthful in reporting the incident at the various junctures. We do not believe that the Applicant has engaged in a strategy of denial or misleading statements. Once again, this incident reflects poorly on the Applicant's good judgment and he now realizes that his choice of companions 10-15 years ago was questionable at best. Since 1991, the Applicant has completed undergraduate and graduate school, has obtained his CPA certificate, and has passed the Michigan Bar Exam. Further his work record since 1999 has been exemplary. He has married, purchased a home, is expecting his first child, and has recently begun working for General Motors on a project basis. Overall, we are satisfied that the Applicant does

possess the high standards of character, fitness, and moral qualifications required for admission to the practice of law in Ohio.

Very truly yours,

s/Ellen K. Meehan s/Richard J. Rudolph

EKM/srb
Enclosures

APPENDIX B

BEFORE THE BOARD OF COMMISSIONERS
ON CHARACTER AND FITNESS OF
THE SUPREME COURT OF OHIO

In re Application of	:	Case No. 244
Alexander Bagne	:	
	:	
	:	

REPORT AND RECOMMENDATION OF THE BOARD

A hearing was held by the panel of Nancy Drake Hammond, Rhonda Davis and Scott McBride, on November 7, 2002. Besides the panel, Mr. Jay Hanson, representing Cleveland-Cuyahoga Bar Association and Mr. Alexander Bagne, applicant, were present. The panel unanimously recommended the applicant be disapproved but be allowed to re-apply to take the February, 2004 Ohio Bar Examination. For the reasons set forth in this report and recommendation, the Board recommends that the applicant be disapproved and that he be allowed to re-apply to take the February 2004 Ohio Bar Examination.

Report of the Board

A. Statement of Facts

In 1999, Mr. Bagne applied and sat for the Michigan Bar Exam. He passed. He then failed to have his character and fitness approved. After three hearings and a motion to the Michigan

Supreme Court it was decided that he may re-apply in Michigan in 2006.

Mr. Bagne has a BSBA from The Ohio State University a law degree from Tulane University, and MBA from the University of Minnesota, and is a CPA. He applied to take the Ohio Bar on April 17, 2002. He was approved by the Cleveland-Cuyahoga Bar. This case is before the Board upon a sua sponte hearing requested by the Board.

The main concern stems from an assault which occurred when he was 19 years old. The applicant and a buddy bought B-B guns and shot them in the applicant's back yard. Then they drove to a park with a wooded embankment, got out of the car, and shot some more. They got back in the car and headed home; the applicant was shooting out the window. He struck a jogger who he maintains he never saw the jogger. He and his buddy drove home. Another friend arrived and they ordered pizza. They went to pick up the pizza and rent a movie. The trio then shot some more B-Bs out the window at a shopping mall which was closed. They again returned home and shot. Someone notified the police, who arrived at the house and arrested the three boys. They were taken to a police station and questioned individually. Applicant testified he was afraid and scared he would be jailed. So, in response to officers questioning, he said that the male jogger was wearing gray. Actually the jogger was a female wearing bright colors. The applicant testified he spent one to two nights in jail and then went home and back to college at OSU. The matter was some time being resolved. He was charged with Aggravated Assault. Represented by counsel, the applicant pleaded guilty to misdemeanor assault, and he received a suspended jail sentence and one year probation. He did not recite he had received a suspended sentence until the record was brought to his attention by the panel. During this time he completed OSU and was in graduate school in Minnesota. His

probation was transferred to Minnesota. He successfully completed probation and was discharged in 1995. Since 1995 his involvement with law enforcement has been approximately 12 parking tickets and four to five speeding tickets.

The main concern with this incident is the applicant's candor concerning it and his seeming lack of remorse about it. The first example is his telling the police that the jogger was wearing gray when he knew this was not accurate. Applicant explains the fear factor motivated the answer. Applicant told two Michigan panels the shooting was accidental. He suggested to the third Michigan panel that the driver of the car, Jim Brimley, now deceased, leaned over him and shot out the window with his gun, and so it could have been him who shot the jogger. Applicant explained to us that his lawyer suggested this possibility prior to the third hearing. Interestingly, he'd had the same lawyer at the second hearing. It also should be noted that he enunciated this scenario suggested by counsel after he had a law degree and had taken the Michigan Bar Examination. He obtained new counsel for his motion to the Michigan Supreme Court. It was not until this point in the hearing that the panel understood the exact number of hearings and number of counsel.

Applicant states he takes full responsibility for the incident. Indeed, he paid restitution of, he thinks, several hundred dollars. He never met the victim. He testified she jogged home, went to the hospital and had the B-B removed from the neck. He expresses no remorse for shooting this lady.

The applicant states that the Bar hearings in Michigan resulted in three erroneous findings: 1. that the applicant minimized the incident on his application; applicant opines this is because the summary he wrote was short; 2. that he intentionally shot the jogger, which the applicant categorically denies; and 3. that

because he wouldn't prove it to the Board, he lied to them. Applicant maintains it was dusk, hilly, and he never saw the jogger.

Mr. Michael Hohauser testified on behalf of the applicant. He has known the Applicant for two years, ever since the applicant clerked for him one summer. Mr. Hohauser describes applicant as responsible, honest, and bright. He also appeared on behalf of applicant at one of the Michigan hearings. Mr. Hohauser believes the applicant revealed enough on his Michigan application. He doesn't know what else the Michigan panel could want. It is his opinion that the Michigan panel's decision is political. Applicant's act was a youthful incident. His testimony was emphatic that the applicant is not a liar and that there are no inconsistencies in applicant's statements. It was dark, applicant was in the area of the jogger, and applicant was shooting in the direction of the jogger, (on this third declaration, applicant interrupted his witness to say he didn't know a jogger was there, See Transcript of 11/07/02 Panel Hearing, Page 57)

The applicant seems to have reservations regarding taking responsibility for his actions. Responsibility for his acts always seems to be in response to circumstances outside of his sole determination. For example, he was going to defend his ticket for going 79 MPH in a 60 MPH zone on Route 480 with the fact that is what other drivers do on Route 480. He admitted to a non-moving violation, See Transcript of 11/07/02 panel Hearing, pages 42-43.

Admittedly, applicant has always discharged any responsibility for his acts. However, he shows no remorse for having committed them.

In his closing statement, applicant stated he is an asset to his community, he is great, and he will do honor to the Ohio Bar.

B. Discussion

The Board is of the opinion that the applicant has failed to sustain his burden of providing the panel with clear and convincing evidence he possesses the requisite character, fitness and moral qualifications for admission to the practice of law, Gov. Bar Rule 1, Sec. 11(D)(1).

Specifically, the Board concludes that the incident with the jogger was the commission of a crime, Gov. Bar Rule 1(D)(3)(a), that the applicant failed to provide complete and accurate information and provided false statements to law enforcement officials and to the Michigan Bar, Gov. Bar Rule 1, Sec. 11(D)(3)(g) & (h) The Board also finds he was denied admission to the Michigan Bar on character and fitness grounds, Gov Bar Rule 1, Sec. 11(D)(3)(n).

Having made these findings, the Board considers the applicant's present character and fitness in light of these prior acts, Gov. Bar Rule 1, Sec. 11(D)(4) The Board recognizes that the applicant is now 30 years old and that this incident occurred 11 years ago when applicant was 19 years old, Gov. Bar Rule 1, Sec. 11(D)(4)(a) & (b). Despite the fact that the conduct was very serious and injured the jogger, Gov. Bar Rule 1, Sec. 11(D)(4)(d), the Board is more troubled by the candor and credibility of the applicant concerning the incident. He has an original explanation to local law enforcement, See Transcript of 11/07/02 panel Hearing, Pages 24-25, and then later versions, See Transcript of 11/07/02 Panel Hearing, Pages 8-9, (finding of Michigan Bar). During the hearing before the Ohio panel, the applicant interrupted his witness to supply his correction to the witnesses' testimony, See Transcript of 11/07/02 Panel Hearing, Page 57. All of these renditions lead the Board to conclude the applicant has lacked candor during our admissions process as well as that of Michigan, Gov. Bar Rule 1, Sec. 11(D)(4)(i)

Further, the applicant stated that he was an asset to his community, See Transcript of 11/07/02 Panel Hearing, Page 60. Other than this assertion, there is no evidence of any positive social contribution by the applicant, Gov. Bar Rule 1, Sec. 11 (4)(h)

Again, the applicant failed to demonstrate the candor the Board deems necessary for approval.

Recommendation

For the reasons stated herein, the Board recommends the applicant be denied. The panel further recommends the applicant be allowed to re-apply to take the February, 2004 Ohio Bar Examination.

APPENDIX C

August 28, 2003

Alexander A. Bagne
3286 Stockholm Road
Shaker Heights, OH 44120

Re: *In re: Application of Alexander Afsheen Bagne*
Case No. 03-1228

Dear Mr. Bagne:

We were unable to file the enclosed document because it does not include the proof (certificate) of service required by Rule XIV of the Rules of Practice of the Supreme Court of Ohio indicating service on all other parties to the case, in this case the relator. Service to a party represented by counsel must be made on counsel. When a document is required to contain a proof of service, the Clerk's Office is prohibited form filing the document when that proof of service is missing. See Rule XIV, Section 2(C).

Rule VIII, Section 7, requires any changes to a document be made within the original time for filing. Because the time for filing ended at 5 p.m. yesterday, an amended document cannot be filed at this time.

Please note that, as a courtesy, an attempt was made to alert you to the deficiency immediately after it was discovered yesterday. A

voice mail message was left at the number provided at approximately 10:09 a.m.

Sincerely,

s/JoElla
Deputy Clerk

Enclosures

APPENDIX D

IN THE SUPREME COURT OF OHIO

[October 1, 2003, Decided]

No. 2003-1228

IN RE APPLICATION OF BAGNE

OPINION: MOTION AND PROCEDURAL RULINGS

Upon consideration of applicant's motion to allow oral argument, IT IS ORDERED by the court that the motion to allow oral argument be, and hereby is, denied.

APPENDIX E

IN THE SUPREME COURT OF OHIO

[February 3, 2004, Submitted]
[May 12, 2004, Decided]

No. 2003-1228

IN RE APPLICATION OF BAGNE

OPINION:

Applicant, Alexander A. Bagne of Shaker Heights, Ohio, applied on January 15, 2002, to register as a candidate for admission to the practice of law in Ohio. On April 17, 2002, applicant applied to take the Ohio bar examination to be administered in July 2002. On July 9, 2002, the Joint Admissions Committee of the Cleveland and Cuyahoga County Bar Associations recommended that applicant's character, fitness, and moral qualifications be approved for the purpose of his admission to the Ohio bar.

On July 22, 2002, the Board of Commissioners on Character and Fitness invoked its authority under Gov.Bar R. I(10)(B)(2)(e) to further investigate the character, fitness, and moral qualifications of the applicant, appointing a panel to consider the cause. After a hearing conducted on November 7, 2002, the panel reported its findings to the board. The panel recommended, based on the applicant's character and fitness, disapproval of his application to take the July 2002 bar examination but that he be permitted to reapply for the February 2004 bar examination.

Applicant earned an accounting degree from Ohio State University in 1994, graduated in 1996 with an MBA from the University of Minnesota, received his law degree from Tulane University in 1999, and is a certified public accountant. In 1999, applicant took the Michigan bar examination but was denied admission to the Michigan bar without release of the examination results because he did not consistently account in character and fitness proceedings for a crime he committed in 1991. Applicant is not permitted to reapply for admission to the Michigan bar until 2006.

In 1991, when he was 19 years old, applicant was accused of shooting a jogger in the neck with a BB gun. The crime occurred while applicant and a friend were joyriding in an area that applicant thought was fairly remote, and applicant was shooting the BB gun randomly from the passenger side of the car. Applicant insisted before the panel that the shooting was accidental. He claimed that he had not actually seen the jogger because it was dusk, he was traveling on a two-lane road, and the jogger, although running on the passenger side of the car, might have been just cresting an embankment. Applicant guessed that one of his shots must have struck the jogger.

Applicant related to the panel that when he and his friend were apprehended on the night of the shooting, applicant gave police a false description of the jogger, describing the jogger as a man wearing grey, when the jogger was actually a woman wearing brightly colored clothing. Applicant explained that he had lied to police because he was afraid and thought that he might be released if he cooperated in some way.

While the charges were pending, applicant completed his studies at Ohio State University. Applicant then pled guilty to aggravated assault, a misdemeanor, and was sentenced to 12 months, all

suspended, with one year of probation.[2] During his probation, with permission from the court, he went to graduate school in Minnesota. Applicant completed his probation and was discharged in 1995. His criminal record since then has included only traffic violations -- approximately 12 parking tickets and 5 speeding tickets.

The panel inquired into the reasons why the Michigan Board of Law Examiners had found applicant's credibility and candor suspect. Applicant participated in three separate character and fitness hearings in Michigan and unsuccessfully petitioned the Michigan Supreme Court for review. According to the evidence, applicant was criticized in reports from these hearings for appearing to be willing to say anything for the sake of approval and for attempting to create false impressions as to the seriousness of and his responsibility for his crime. Particularly troubling to the panel was a change in applicant's testimony during the third hearing in Michigan, when he proposed for the first time that the driver of the car, who had died before the hearing, might actually have fired the shot that struck the jogger.

In addition to his own testimony, applicant provided the telephonic testimony of Michael Hohauser, a seasoned Michigan attorney who then served as a Commissioner of the State Bar of Michigan and had formerly served for many years in the Representative Assembly of that state's bar, among other capacities. Hohauser had known applicant for two years, during which he had employed applicant as a clerk. Hohauser testified, as he did on applicant's behalf during the admission proceedings in Michigan, that he was confident in applicant's integrity and applicant's genuine efforts to

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[2] Applicant's sentence included suspended jail time, although he apparently failed to apprise admission authorities of this part of his penalty. The panel brought the omission to applicant's attention, apparently without considering the omission deliberate.

be forthcoming during that process. Hohauser emphasized that applicant's crime occurred long ago and that applicant had since distinguished himself in his studies and work as a willing and capable performer.

Hohauser also testified that he had reviewed applicant's Michigan admission materials and police reports of applicant's 1991 crime. In response to the panel's inquiry on the issue, he said that he had seen no inconsistencies. Hohauser then explained:

> "You know * * * in these police reports there's a question about whether * * * the boys were riding about shooting in the dark and aimed for the jogger or didn't aim for the jogger, and I don't know the answer to that question. My impression from Alex was that he darn well knew he was shooting in the direction of the jogger, and I didn't find anything dissembling or problematic about that [as far as applicant's candor in his admission materials]."

At that point, a panel member inquired further of Hohauser's impression. This exchange ensued:

> "Mr. McBride: Is it your impression from talking to Alex that at the time that he was shooting, he knew that he was shooting in the direction of the jogger?
>
> "Mr. Hohauser: It seems to me, and I wish I had notes or something in front of me, but it seems to me that he knew he was shooting in the dark and he knew there was a jogger in that area, and my memory is that he knew he was shooting in the area of the jogger.

"Mr. Bagne: Actually, I didn't know.

"Mr. Hohauser: I'm sorry, I couldn't hear you.

"Mr. Bagne: I said actually I didn't know that there was a jogger there.

"Mr. Hohauser: I'm not going to - I'm only going to testify truthfully from my sitting here today."

Upon review, the board concluded that applicant seemed unwilling to consistently tell the truth or genuinely accept the consequences for his acts, however many years ago those acts occurred. The board was struck by applicant's need to correct even his own witness as to the degree of applicant's responsibility for shooting the jogger in 1991. Moreover, applicant had blamed his attorney for advising him to suggest during the third Michigan character and fitness hearing that he might not have been completely responsible for the jogger's injury. The board was skeptical that the same lawyer who had represented applicant in the second hearing would have advised him to change testimony in preparation for a third. The board found that applicant had a fairly cavalier absence of remorse for his victim, whom he had never met, implying on one occasion that the jogger's injuries were insignificant because after the shooting, she had been able to jog back to her house before going to the hospital.

The board concluded that applicant had thus failed to sustain his burden of proving by clear and convincing evidence that he currently possesses the requisite character, fitness, and moral qualifications for admission to the Ohio bar. Gov.Bar R. I(11)(D)(1). In making this determination, the board applied the standards of Gov.Bar R. I(11)(D):

"The Board concludes that the incident with the jogger was the commission of a crime, Gov.Bar Rule I(11)(D)(3)(a), [and] that the applicant failed to provide complete and accurate information and provided false statements to law enforcement officials and to the Michigan Bar, Gov.Bar Rule I, Sec. (11)(D)(3)(g) and (h). The Board also finds he was denied admission to the Michigan Bar on character and fitness grounds, Gov.Bar Rule I, Sec. (11)(D)(3)(n).

"Having made these findings, the Board considers the applicant's present character and fitness in light of these prior acts, Gov.Bar Rule I, Sec. (11)(D)(4). The Board recognizes that the applicant is now 30 years old and that this incident occurred 11 years ago when applicant was 19 years old, Gov.Bar Rule I, Sec. (11)(D)(4)(a) and (b). Despite the fact that the conduct was very serious and injured the jogger, Gov.Bar Rule I, Sec. (11)(D)(4)(d), the Board is more troubled by the candor and credibility of the applicant concerning the incident. He has an original explanation to local law enforcement * * * and then later versions * * *. During the hearing before the Ohio panel, the applicant interrupted his witness to supply his correction of the witness's testimony. * * * All of these renditions lead the Board to conclude the applicant has lacked candor during our admissions process as well as that of Michigan, Gov.Bar Rule I, Sec.(11)(D)(4)(i)."

The board adopted the recommendation of the panel and also recommended, based on the applicant's character and fitness, that his application to take the July 2002 bar examination be disapproved but that he be permitted to reapply for the February 2004 bar examination.

"Evidence of false statements, including material omissions, and lack of candor in the admissions process reflect poorly on an applicant's present character, fitness, and moral qualifications." In

re Application of Panepinto (1999), 84 Ohio St. 3d 397, 1999 Ohio 466, 704 N.E.2d 564; In re Application of Cvammen, 102 Ohio St. 3d 13, 2004 Ohio 1584, 806 N.E.2d 498. Even one incomplete answer can lead to the disapproval of an admission application if the applicant does not fully and honestly explain when the opportunity arises. See, e.g., In re Application of Ireland-Phillips (1995), 71 Ohio St. 3d 609, 1995 Ohio 63, 646 N.E.2d 453. Thus, upon review, we agree that applicant has not demonstrated his current character, fitness, and moral qualifications for admission to the Ohio bar. And because this record reveals more than one instance of applicant's reluctance to respond with total honesty, we modify the board's recommendation to a more commensurate disposition.

Accordingly, applicant's character and fitness for the purpose of his application to take the July 2002 bar examination are hereby disapproved; however, he is permitted to reapply for the bar examination to be administered in February 2005.

Judgment accordingly.

MOYER, C.J., RESNICK, F.E. SWEENEY, PFEIFER, LUNDBERG STRATTON, O'CONNOR and O'DONNELL, JJ., concur.

Alexander A. Bagne, pro se.

Weston, Hurd, Fallon, Paisley & Howley, L.L.P., and Jay S. Hanson, for the Joint Admissions Committee of the Cleveland and Cuyahoga Bar Associations.

APPENDIX F

IN THE SUPREME COURT OF OHIO

[July 14, 2004, Decided]

No. 2003-1228

IN RE APPLICATION OF BAGNE

OPINION: RECONSIDERATION OF PRIOR DECISIONS

On motion for reconsideration. Motion denied.